Pratt & Whitney Aircraft, a Division of United Technologies Corporation *and* Local Lodge #700, District 91, International Association of Machinists and Aerospace Workers, AFL–CIO. Case 34–CA–5044

April 19, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On August 5, 1992, Administrative Law Judge James F. Morton issued the attached decision. Both the General Counsel and the Respondent filed exceptions, supporting briefs, and answering briefs to the other party's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Pratt & Whitney Aircraft, a Division of United Technologies Corporation, Middletown, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

''(a) Submit for review by the Union revised evaluations of employee job skills at the Middletown plant, as of July 30, 1990, with credit for the individual employee's ability to learn the job quickly and for transferable skills of employees who, prior thereto, had principally performed one operation.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to honor any agreement we made with Local Lodge #700, District 91, International Association of Machinists and Aerospace Workers, AFL–CIO, in seeking to resolve Job Design grievances you file.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL revise the evaluations we made in the summer of 1990 as to your job abilities so as to give credit for an individual employee's ability to learn the job quickly and for the transferable skills of employees who previously had been assigned for long periods principally to one job.

WE WILL devise a formula to establish the raises to be given employees as a result of those revised evaluations, without any limit thereon, other than the maximum labor grade rate, with the raises for the Weldment employees retroactive to July 30, 1990, and WE WILL apply the results of that formula to unit employees at our Middletown plant at that time.

PRATT & WHITNEY AIRCRAFT, A DIVISION OF UNITED TECHNOLOGIES CORPORATION

William E. O'Connor, Esq., for the General Counsel.
Edward J. Dempsey, Esq., of Hartford, Connecticut, for the Respondent.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaint alleges that Pratt & Whitney Aircraft, a Division of United Technologies Corporation (the Respondent) has engaged in an unfair labor practice within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by having failed to honor an agreement it had reached with Local Lodge #700, District 91, International Association of Machinists and Aerospace Workers, AFL–CIO (the Union). The General Counsel contends, in essence, and the Respondent denies, that an agreement was reached on August

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We correct the following factual errors in the judge's decision: (1) the first name of Union Steward Guarino is Jerry and (2) the collective-bargaining agreement does not provide for mandatory arbitration of the grievances concerning the job design program, but, contrary to the judge's finding, other grievances may be arbitrated pursuant to the contract. These errors do not affect the ultimate disposition of the issues presented here.

[2] The General Counsel excepts to the judge's failure to include ''ability-to-learn-quickly'' as one of the agreed-upon criteria to be used in reevaluating the raises for the job design program. Inasmuch as the credited testimony clearly shows that the Respondent did agree at the August 16 meeting with the Union to use this criterion, we find merit to the General Counsel's exception and shall modify the recommended Order accordingly.

16, 1990, as to the steps the Respondent would take towards adjusting hundreds of grievances filed by unit employees. Those grievances protested the amount of the raise given the respective grievants by the Respondent, after it had rated each as to how able he or she was in operating various types of machinery.

The hearing was held in Hartford, Connecticut, in February 1992. On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel[1] and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent builds aircraft engines and related equipment at its plants in Connecticut. In its operations annually, it meets the Board's nonretail jurisdictional standard.

The Union is a labor organization as defined in the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent has four plants in Connecticut. The Union represents, in four separate units, the production and maintenance employees in those plants. This case involves the discussions concerning the many grievances filed by employees at one of those plants, the one in Middletown.

Until recent years, the collective-bargaining agreements covering the Middletown employees had provided for a wage scale which contained grades 0 to 11. Grade 11 was the lowest grade, 0 the highest. Each grade had levels. An employer in a grade moved to a higher level therein every 20 weeks, when that employee received an automatic 10-cent increase, until the maximum level for that grade was reached. An employee could also receive a merit increase, the amount of which was limited only by the maximum wage rate for that employee's grade.

In 1990, hundreds of unit employees were each promoted to the next labor grade when a new work assignment program, discussed further below, went into effect. The collective-bargaining agreement provided that an employee shall receive a 20-cent-per-hour wage increase for such an upgrade and that is the amount the Respondent gave each of these upgraded employees. Because the new work assignment program materially changed the unit job descriptions, many of the promoted employees felt that they should have received what they termed ''rate to rate'' increases and not just the 20-cent-per-hour increase given them. To put these matters in focus, some background is needed.

For many years, the Union has sought in contract negotiations a provision whereby the Respondent would be required to pay an employee, who was promoted to a higher labor grade, a rate in that grade at the same level that that employee was at in the labor grade from which he or she was promoted. Thus, the Union sought to get for an employee, who is promoted from midlevel in labor grade 8 to labor grade 7, the midlevel rate for labor grade 7. In seeking such an upgrade, the Union used the phrase ''rate to rate.''[2]

The Respondent rejected the Union's efforts to secure a ''rate to rate'' provision. The contract, as noted above, provides for a 20-cent-per-hour raise for an upgrade. That contract covers the employees at the Middletown plant and was effective from 1988 to December 1991.[3] In the negotiations leading up to the contract and apparently for some time after it had been in effect, the Respondent and the Union had been studying ways to consolidate the large number of job descriptions for the unit employees, with a view towards broadening their job functions and towards giving the Respondent more flexibility in making work assignments, in furtherance of improving the Respondent's competitive position. This study resulted in a program, called ''Job Design.'' In one part of the Middletown plant, it has resulted in reducing the number of job descriptions from 120 to just 18. ''Job Design'' contemplates that employees would be trained to perform a variety of functions and that the training process would be part of their jobs.

The Job Design program was first put into effect in Middletown in March 1990 when it was applied to employees in Castings and Forgings. Many of these employees were given a promotion and received the contractual 20-cent-hour increase. Hundreds of them, however, filed grievances, claiming that they were entitled to a ''rate to rate'' increase by virtue of the additional responsibilities they had under Job Design.

The collective-bargaining agreement does not provide for arbitration. It does, however, obligate the Respondent to discuss, at several steps, grievances with the Union. When the Job Design program was expanded into the Weldments section of the Middletown plant in July 1990, hundreds more employees were promoted and each was given the 20-cent-per-hour contract increase. They too filed Job Design grievances. The time spent in processing each of the hundreds of Job Design grievances ''overwhelmed'' the operations at Middletown.

Those operations are the responsibility of the general manager at Middletown, George Katsarakes. He, however, played no role in the discussions with the Union as to the Job Design grievances. The two operation managers under him and the director of human resources at the Middletown plant did. They are respectively, Robert Whitty, Ronald Christensen, and Todd Barnett.

---

[1] The Respondent filed a motion to strike from General Counsel's brief all references to a statement of position the Respondent had submitted to Region 34 prior to issuance of the complaint. The Respondent notes that the General Counsel did not offer that statement of position in evidence but that it was made part of the record as it had been submitted by the Respondent in connection with a motion to dismiss the complaint, a motion which had been denied. The Respondent asserts that, had it been aware that the General Counsel would seek to use that statement as an admission against interest, it would have adduced testimony thereon. The General Counsel's brief contrasts claims made in the statement of position with the accounts given by the Respondent's own witnesses. The General Counsel argues that the testimony of the Respondent's witnesses ''is riddled with contradiction.'' An admission against interest may be used as evidence as well as to impeach and thus includes assertions made in position statements of counsel. See *Hotel & Restaurant Employees Local 19 (Seasons Restaurant)*, 277 NLRB 842, 843 (1985). Accordingly, the Respondent's motion to strike is denied.

[2] In the 1970s, it appears that the Union, at one point, had succeeded in getting the Respondent to pay a ''rate to rate'' increase on a promotion.

[3] Separate collective-bargaining agreements cover each of the units at the Respondent's other three plants in Connecticut.

In early August 1990 (all dates hereinafter are for 1990 unless stated otherwise), Barnett told Whitty and Christensen to talk with the union stewards in their respective sections in an effort to facilitate handling the Job Design grievances. Christensen met with stewards Lloyd Williams and Ron Guarino, telling them that he heard them ''loud and clear,'' in referring to the numerous grievances. He also acknowledged that there were unit employees deserving of more than the raise they received.

The other operations manager, Whitty, held a similar meeting, at about the same time, with Union Stewards Kip Peterson and Ralph Aiello. A third steward in that section, Thomas Meglin, was not in that day. Whitty told Peterson and Aiello that he would like to see the grievances withdrawn so that they could address this ''hell of a problem.'' Aiello told him that the grievances would not be withdrawn and that any agreement would have to be in writing. Whitty told him that that would not be a problem.

Arrangements were then made for the meeting, as to which conflicting accounts have been given.

B. *The August 16 Meeting*

Present for the Respondent were Operations Managers Whitty and Christensen, Middletown Director of Human Resources Todd Barnett, and Senior Personnel Adviser Bob Swensen. For the Union, its President Dave Durbin, its Vice President Doug Johnson, and Stewards Peterson, Aiello, Williams, and Meglin.

Christensen started the discussion by saying, as he had to two stewards previously, that the Respondent hears the Union ''loud and clear.'' He asked what it would take to resolve the grievances and was greeted with shouts of ''rate to rate.'' As to the ensuing discussion, the accounts of the General Counsel's witnesses and those of Respondent vary.

The six union participants testified for the General Counsel in varying styles. Thus, the Union's president, Durbin, who was ill, participated very little and tended to summarize the discussions; Steward Meglin had come to the meeting prepared with a written agenda; in his testimony, he gave an expanded and vivid account; Steward Petersen also testified in detail; the accounts of steward Aiello and Union Vice President Johnson tended to emphasize the points they made at the meeting; Steward Williams' account noted that Meglin and Aiello did most of the talking for the Union and noted also that ''rate-to-rate,'' ''pigeonholed'' employees and retroactivity were discussed, and that Whitty agreed to put the discussion on these matters in writing until Barnett ''stepped in and said he didn't like that or words to that effect.''

Meglin's and Aiello's accounts were detailed as to the points under discussion. The substance of their accounts and those of the other witnesses for the General Counsel is that Whitty and Christensen agreed to the following items: (a) line supervisors would evaluate the individual employees solely on their ability to operate the various pieces of machinery,[4] (b) some skilled employees could go ''rate-to-rate'' (i.e., that there would be no cap set, other that the maximum for a labor grade, as to the amount of a wage increase an employee could receive as a consequence of the evaluation to be done), (c) special weight would be given in the evaluation of employees who had been pigeonholed on a job in their having been assigned for years to one machine so that they had not had the opportunity to develop skills on other machines, (d) the increases to be given the employees in the Weldments area would be retroactive to July 30 and that an effort would be made to get retroactively for those employees who went into Job Design in March, (e) business unit managers under Whitty and Christensen would review the charts used by the line supervisors in evaluating the skills so as to protect against supervisors making unfair evaluations, (f) the operations managers would hold meetings with groups of unit employees within a few days to outline to them the points just noted, and (g) there would be another meeting with the Union so that the Union could be assured that ''everything was going according to schedule'' as it had doubts that the Respondent could meet the target date the Respondent set for itself, September 10, to complete the evaluations as planned. When the Union asked that the agreement on these seven items be reduced to writing and signed, Whitty agreed but Barnett, according to the General Counsel's witnesses, demurred saying that there was no need to do so. The Union insisted, saying that they did not trust the Respondent. At that point, Operations Manager Christensen stated that they could trust him as he had never lied to them. The Union then caucused. On their return, they said that they accepted Christensen's word.

The Respondent's witnesses contested the testimony that agreement was reached on the items, listed above. It contends that there were confused discussions at the meeting among various of the participants and that, at various points, the topics of retroactivity, possible supervisory bias in making evaluations, rate-to-rate, and pigeonholing came up but that all that resulted was an agreement to agree. Their testimony also reflected that Whitty and Christensen would inform the unit employees, within a day or two, of the substance of the meeting itself. Whitty, Christensen, and Barnett testified for the Respondent. Senior Personnel Adviser Swensen did not testify.

The credibility resolution respecting the differences between the accounts of the General Counsel's witnesses and those of the Respondent is contained in a separate section below.

C. *The Meetings with the Employees*

Whitty and Christensen had planned to hold meetings with the Middletown employees to give them a progress report as to the state of the Respondent's business and they decided to preface those meetings with an outline of the topics discussed at the August 16 meeting. They held several group meetings of the employees.

Union Steward Meglin attended the first such meeting which Whitty held. He testified that Whitty did not talk of ''any of the facts'' of the August 16 meeting and that when he, Meglin, asked about the items discussed, Whitty's responses were so short that he had to be pressed further. Thus Meglin testified that, when he asked Whitty to tell the employees about the factors to be used in the evaluations, Whitty responded only ''Job knowledge'' and that he Meglin, had to question Whitty specifically about the pigeonholing issue and each of the other items.

[4] Union Steward Meglin testified that the Job Design program was concerned with developing skills and that to confuse it with a program to evaluate job performance is equivalent to ''mixing apples and oranges.''

Union Steward Peterson testified that Whitty ''kind of skirted the questions.'' Union Steward Williams' testimony is to the effect that Christensen's report to the employees was also short and lacking in details.

One of the Respondent's business unit managers, Michael Paul, attended a meeting Whitty held with the employees. He testified that he was surprised that Whitty did not talk about the job design grievances ''that much'' and that instead talked about the state of the business. Paul related further that, during that question and answer part of the meeting, Whitty was asked questions about whether raises would be capped, whether employees would be penalized because they have been running one machine so well, as to whether some supervisors have ''pets'' and about retroactivity. His testimony disclosed little as to what Whitty's responses to most of those questions were.

Whitty's account of those meetings is that he was asked ''a loaded question'' as to retroactivity and that Meglin was trying to put words in his mouth. Christensen's account of his meetings with the employees under him reflects that he used notes he prepared. These contain the statement that ''the Union and [the Respondent] worked out the details of an agreement on the present Job Design problem.'' When asked on cross-examination what those details were, he replied that the Union agreed to give the Respondent 3 weeks to come up with something better.

D. *The September 7 Meeting*

On September 7, the union representatives met with the Respondent's operations manager for an ''update'' as to how the Respondent would evaluate the abilities of the unit employees. The mood of the participants was ''tense.'' A chart was shown to the union representatives. They were told that such a chart was used to evaluate each employee and that those charts were reviewed with the union stewards. Aiello, one of the stewards present, challenged that statement. A business unit manager acknowledged shortly afterwards that the stewards had not been consulted when the charts were used.

As the meeting progressed, it became clear to the Union that the Respondent had decided that there would be a maximum raise of 50 cents an hour, which would include the 20-cent-per-hour raises already given. Further, the Union was advised that there would be no retroactivity. The Union learned too that no allowances were made for employees who had been ''pigeonholed'' in the same job for years.

Union Steward Meglin, in angry terms, told the Respondent's representatives that they had broken every commitment they had made and that they were liars, cheats, and thieves. The Respondent's director of human resources, Bennett, stated that the Respondent had gone as far as it could. Meglin walked out of the meeting and the other union representatives followed him.

On September 10, the Respondent made effective the wage increases pursuant to the formula it adopted.

E. *Credibility*

I credit the accounts of the General Counsel's witnesses that there was an agreement reached on August 16 as to a number of specific steps the Respondent would take towards adjusting the voluminous Job Design grievances. I reject the Respondent's contention that all that was agreed to that day was that the parties would reach an agreement.

Operation Manager Christensen's notes state that the Union and the Respondent had, on August 16, worked out the details of an agreement. The vivid accounts given by the General Counsel's witnesses clearly demonstrate that a detailed accord was reached. Their outrage, as expressed on September 7, did not stem from some oversight by the Respondent in expounding some type of ''agreement to agree'' but obviously was voiced at the Respondent's wholesale rejection of the terms of the understanding reached at the August 16 meeting. I note too an apparent contradiction in the account given by Operations Manager Whitty. He testified that he told the union representatives that an employee could not go ''rate-to-rate'' as the Respondent had made no decision thereon. Obviously, if no decision was made there was no decision that employees would not go ''rate-to-rate.'' Nor was I impressed with his testimony that he was being asked ''loaded'' questions at the meetings he held with employees after the August 16 meetings.[5]

The credited testimony establishes that the Respondent had agreed with the Union, on August 16, as to the items (a) through (h) set out in section B above. It is clear that the Respondent has not honored that commitment.

F. *Analysis*

Section 8(d) of the Act defines the duty to bargain collectively as the mutual obligation of an employer and the employees' representative to confer in good faith as to wages, hours, and other terms and conditions of employment. The evidence in this case discloses that the Respondent has patently failed to fulfill its obligations in that regard by having lead the Union to believe it had wanted and had reached an accord to resolve a difficult grievance problem and by proceeding thereafter on a unilateral course of action diametrically opposite to the agreement it had made as to the procedures to be following to adjust the Job Design grievances. In *Embossing Printers*, 268 NLRB 710, 717–718 (1984), the Board held that the employer's disregard of an agreement, during contract negotiations, to defer implementation of a disciplinary system arrived at during the discussions, was violative of Section 8(a)(5) of the Act. Analogously, the Respondent's disregard of the accord it reached with the Union on August 16 was similarly violative. I therefore find that the Respondent, by having reneged on the commitments it made with the Union on August 16, has failed to bargain collectively with the Union as required by Section 8(d) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

[5] The testimony given by one of the Respondent's witnesses, Michael Paul, a business unit manager, indicates that the Respondent may have been engaged in a charade in asking the Union, on August 16, to put the Job Design grievances on hold. His account seems to reflect that, prior to August 16, the Respondent had decided to give the Middletown employees the same raises their counterparts at its other plants had been given and that he and the other other business unit managers had been given then a 3-week time target to meet to get their evaluation into the Respondent's main office.

2. The Union is a labor organization as defined in Section 2(5) of the Act.

3. The Respondent has engaged in an unfair labor practice as defined in Section 8(a)(1) and (5) of the Act by having failed to honor the commitments it gave the Union on August 16, 1990, towards resolving numerous Job Design grievances.

4. The foregoing unfair labor practice affects commerce within the meaning of Section 2(2), (6), and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in an unfair labor practice, I find it necessary to order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall, unless the Union notifies the Respondent otherwise, revise the charts it used between August 16 and September 7, 1990, to evaluate its employees' abilities so as to make allowances for transferable skills possessed by unit employees who, prior thereto, had been performing essentially only one operation for a protracted period. Thereupon, the Respondent shall devise and apply a formula to determine the raises to be given to the unit employees as a result of these revised evaluations. The formula will limit the amount of the raises only by the maximum rate in the respective labor grades. The resultant raises will be retroactive to July 30, 1990, for the Weldment employees at the Middletown facility.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, Pratt & Whitney Aircraft, a Division of United Technologies Corporation, Middletown, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to honor any agreement reached with Local Lodge #700, District 91, International Association of Machinists and Aerospace Workers, AFL–CIO (the Union) to resolve grievances filed by employees at the Respondent's Middletown, Connecticut plant as to the impact of the Job Design program on their employment status.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Submit for review by the Union revised evaluations of employee job skills at the Middletown plant, as of July 30, 1990, with credit for transferable skills of employees who, prior thereto, had principally performed one operation.

(b) Devise a formula to establish the raises to be given those employees as a result of those revised evaluations without any limit thereon other than the maximum labor grade rate, these raises to be retroactive to July 30, 1990, for the Weldment employees at the Middletown facility.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its plant in Middletown, Connecticut, copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''